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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/766,736	01/28/2004	Kiyoto Takizawa	AK-339AX	3473
207	7590	05/20/2005	EXAMINER	
WEINGARTEN, SCHURGIN, GAGNEBIN & LEOVICI LLP TEN POST OFFICE SQUARE BOSTON, MA 02109			KERN, KEVIN P	
			ART UNIT	PAPER NUMBER

1725

DATE MAILED: 05/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/766,736

**Applicant(s)**

TAKIZAWA ET AL.

**Examiner**

Kevin P. Kerns

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 28 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☒ Claim(s) 1,2 and 5 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 January 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☒ Certified copies of the priority documents have been received in Application No. 09/740,513.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>1/28/04</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Priority*

1. An application in which the benefits of an earlier application are desired must contain a specific reference to the prior application(s) in the first sentence of the specification of in an application data sheet (37 CFR 1.78(a)(2) and (a)(5)). The specific reference to any prior nonprovisional application must include the relationship (i.e., continuation, divisional, or continuation-in-part) between the applications except when the reference is to a prior application of a CPA assigned the same application number.

Important Note: It is believed that the present application should instead be a continuation of 09/740,513 (now US Patent No. 6,866,088), rather than a divisional. Application No. 09/740,513 was not subject to a restriction requirement (all original claims were examined). In addition, claims in the present application are subject to double patenting rejections with US 6,866,088.

### *Drawings*

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "51" has been used to designate both a pair of plate bodies (Figure 6) and a rod member (Figures 1 and 2) – also see page 11 of specification. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each

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drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: "5a" (Figures 1-3). Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

#### ***Specification***

4. Applicant is reminded of the proper language and format for an abstract of the disclosure.

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The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

Note: It is suggested to replace the current abstract with the abstract provided in parent application 09/740,513 (US 6,866,088), since the current abstract includes the legal term "means" and has more than 150 words.

5. The disclosure is objected to because of the following informalities: at the beginning of the specification, the status of parent application 09/740,513 should be updated (now US Patent No. 6,866,088) -- also see paragraph 1 above. In addition, the specification contains numerous grammatical and usage errors, and the applicants are requested to carefully review the specification for such errors. The applicants are referred to pages 2-8 of their amendment/response to the first Office Action of 09/740,513 dated March 4, 2002 for numerous specification corrections and/or clarifications that were conducted at that time. Appropriate correction is required.

### ***Claim Objections***

6. Claims 1, 2, and 5 are objected to because of the following informalities: in claim 1, 7<sup>th</sup> line of the claim, replace "the" with "a" before "tip" to obtain proper antecedent basis. In claim 1, 12<sup>th</sup> line, insert a comma after "freely" for clarity. In claim 1, 14<sup>th</sup> line,

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"slidable freely" is awkward, and perhaps these terms should be reversed. In claim 1, 9<sup>th</sup> line from the end, insert "is" after "block". In claim 1, 7<sup>th</sup> line from the end, insert "is" after "frame". In claim 1, 3<sup>rd</sup> line from the end, insert "is" before "attached". In claim 2, 3<sup>rd</sup> and 4<sup>th</sup> lines, replace "having" with "has". In claim 5, 3<sup>rd</sup> line, replace "having" with "has". In claim 5, last line, replace "movable" with "movably". Appropriate correction is required.

### ***Double Patenting***

7. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

8. Claims 1-5 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-7 of U.S. Patent No. 6,866,088.

Although the conflicting claims are not identical, they are not patentably distinct from each other because the claimed injection molding machine share at least the following common structural features: an injection mechanism comprising a melting cylinder with

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a supply port, an injection means comprising an injection rod and an injection plunger, and a driving device comprising a hydraulic cylinder (coupled by a tie bar to the melting cylinder) disposed on a rear end of the melting cylinder; a metering (weighing) chamber in communication with a nozzle member; a pedestal (base) supporting the injection mechanism obliquely with the nozzle member directed downwardly to a mold clamping mechanism; a nozzle touch block provided on a tip end portion of the pedestal and touched by the nozzle member obliquely, with an upper side of the nozzle touch block formed as an inclined rear surface; a frame on the rear portion of the pedestal; a nozzle touch device attached to the front of the nozzle touch block to a mold; a sealing ring provided on an outer periphery of a tip portion of the injection plunger; a gate formed on the inclined rear surface; a hot runner formed within the nozzle touch block connecting the gate and injection nozzle; a frame having an upper surface inclined in an inward direction and installed on a seat on the rear of the pedestal and operable to swivel freely; and a pair of support shafts on respective sides of the inclined upper surface, such that the support shafts support the rear portion of the injection mechanism and the driving device of the injection means. One of ordinary skill in the art would have recognized that the metering chamber (versus the weighing chamber of US 6,866,088), as well as the pedestal (versus the base of US 6,866,088), are essentially the same structural/functional elements, respectively. Although claim 1 of the present application does not include the limitations "in-line" injection mechanism and an "agitating member", as set forth in claim 1 of US Patent No. 6,866,088, it would have been obvious to one of

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ordinary skill in the art to exclude these additional features, as open-ended "comprising" language exists in the present application.

### ***Conclusion***

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dr. Kevin P. Kerns whose telephone number is (571) 272-1178. The examiner can normally be reached on Monday-Friday from 8:00am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tom Dunn can be reached on (571) 272-1171. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Kevin P. Kerns *Kevin Kerns 5/16/05*  
Primary Examiner  
Art Unit 1725

*KPK*  
kpk  
May 16, 2005